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1 represent Todd McMurtry and his law firm
2 Hemmer Wessels McMurtry.

3 THE VIDEOGRAPHER: Thank you. Would
4 the Court Reporter please swear in the
5 witness.

6 TODD V. MCMURTRY,
7 having first been duly sworn, was deposed and
8 examined as follows:

9 MR. BEAL: This will be the videotaped
10 deposition of Mr. Todd McMurtry taken for
11 preservation of evidence and use at trial,
12 for cross-examination and all purposes
13 provided under the Georgia Civil Practice
14 Act.

15 EXAMINATION

16 BY MR. BEAL:

17 Q Mr. McMurtry, good morning.

18 A Good morning.

19 Q Can you tell the jury your full name?

20 A Todd Vandivere McMurtry. My mother's
21 maiden name.

22 Q Thank you. You grew up in the area of
23 Kentucky where you practice law; is that correct?

24 A Correct.

25 Q All right. And that's around the town of

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1 Covington, not too far from Cincinnati, Ohio; is that
2 correct?

3 A Correct.

4 Q All right. And I believe that you've
5 been practicing about 35 years. Did I get that
6 correctly?

7 A Yes.

8 Q All right. And you specialize mostly in
9 complex litigation; is that correct?

10 A Yes.

11 Q And you've had various leadership
12 positions with the Kentucky Bar Association and the
13 Northern Kentucky Bar Association?

14 A Correct.

15 Q And those are two different bar
16 associations, right?

17 A Yes.

18 Q All right. And in Kentucky as in
19 Georgia, the Bar Association promulgates the rules
20 regarding ethics and the conduct of lawyers within
21 that state; is that correct?

22 A They propose the rules. They're
23 ultimately approved by the Supreme court.

24 Q And they assist in enforcing those rules;
25 is that correct?

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1 A Correct.

2 Q Thank you. Let's talk about your
3 relationship with Lin Wood and the plaintiffs in this
4 case, Nicole Wade, Jonathan Grunberg and Taylor
5 Wilson. Would it be okay with you if we refer to the
6 three of them as plaintiffs or WG?

7 A Yes.

8 Q Okay. It would save us some time. You
9 were first contacted by Lin Wood regarding -- how did
10 you first come to meet Lin Wood?

11 A I called him on the phone.

12 Q Because Todd -- because Nick Sandmann had
13 retained your services, is that -- or indicated that
14 he wished to retain your services; is that correct?

15 A Correct. Correct. Sorry.

16 Q And tell us who Nick Sandmann is and in
17 general terms what the claims were that he had when
18 he first contacted you.

19 MR. GILFILLAN: And I'm going to
20 object based on attorney/client privilege
21 and the work product doctrine to the extent
22 that it -- you're asking him to talk about
23 claims or potential claims at that point
24 and communication with Nick Sandmann.

25 Subject to that go ahead.

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1 A So Nick Sandmann at the time that I met
2 him was a 16-year-old boy from I believe
3 Independence, Kentucky which is a suburb in northern
4 Kentucky. And he was a student at Covington Catholic
5 High School.

6 BY MR. BEAL:

7 Q And had he been the subject of various
8 news stories in Washington, D.C. regarding some type
9 of exchange or confrontation with a group of native
10 American demonstrators?

11 A Basically, yes. He was -- he was in
12 Washington, D.C., an incident occurred. It went
13 viral and national and he was the subject of that.

14 Q And so when did you first --

15 THE WITNESS: I think we're good.

16 He's muted his phone. (Technical issues.)

17 MR. BEAL: Okay. When were you --
18 when did you reach out to Lin Wood?

19 A Within three or four days of being
20 retained on the case. I would be -- the following
21 week, so the week in the 21st timeframe.

22 BY MR. BEAL:

23 Q I'm sorry, I didn't ask --

24 A January.

25 Q All right. What year?

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1 A 2019.

2 Q Okay. So we're talking about January of
3 2019 and you reach out to Lin Wood. Is that because
4 he was a well known defamation lawyer?

5 A In part. A friend of mine called me and
6 said that Lin was a well regarded defamation lawyer.

7 Q And did you discuss with Lin a joint
8 representation of Nicholas Sandmann?

9 A I did.

10 (Whereupon, Exhibit No. 16 was previously
11 marked for identification by the court
12 reporter.)

13 Q All right. Let's turn over to document
14 16 in your book there.

15 A Got it.

16 Q Does this appear to be Lin's -- one of
17 Lin's early communications to you on January 21st,
18 2019 where he's talking about scheduling an initial
19 meeting with the Sandmanns?

20 A Yes.

21 BY MR. BEAL:

22 Q And does he refer to Taylor Wilson and
23 Jonathan Grunberg as his partners in that
24 communication?

25 A He does.

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1 Q And did you understand that Taylor,
2 Jonathan and Nicole -- I just did it again -- were
3 Lin's partners at that time?

4 MR. REYES: Objection.

5 A By virtue of this e-mail that's what he
6 told me.

7 BY MR. BEAL:

8 Q But I mean did you -- when you met them
9 -- let's ask it this way. So the meeting took place
10 the very next day, is that right, after --

11 A Correct.

12 Q -- this e-mail on Exhibit 16. And did
13 Lin or the WGW folks introduce themselves or
14 represent that they were partners in the law firm?

15 A I recall that Lin said that they were his
16 partners at the meeting.

17 Q Thank you. Throughout your
18 representation of Lin -- of Nick in 2019 and into the
19 beginning of 2020, did Lin routinely refer to the WGW
20 folks as his partners to clients, the court or other
21 attorneys?

22 A I only recall that in the plead -- in
23 some of pleadings I believe they were referenced as
24 partners, some of the initial complaints that were
25 filed. Maybe they were on that line. That's my

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1 recollection. He and I did not discuss that. You
2 know, he didn't -- when we spoke he didn't say my
3 partners, my partners. We just didn't discuss
4 anything one way or the other about their status.

5 Q Other than that initial meeting?

6 A Correct.

7 Q And how about representation to the
8 Court? Do you recall anytime when Lin said one of my
9 partners referring to either of the three plaintiffs
10 here?

11 A I believe he did refer to Taylor Wilson
12 as his partner at a conference with the trial court
13 judge.

14 (Whereupon, Exhibit No. 18 was previously
15 marked for identification by the court
16 reporter.)

17 BY MR. BEAL:

18 Q Thank you. Let's turn over to Exhibit
19 18. Does this appear to be one of the three motions
20 pro hoc vice that you filed on behalf of -- excuse
21 me, one of the four pro hoc vice applications that
22 you filed on behalf of Lin Wood, Taylor Wilson,
23 Jonathan Grunberg and Nicole Wade?

24 A Yes.

25 Q All right. And if we look at page two

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1 under memorandum, the first sentence of the second
2 paragraph, you state under local rule 83.2(a)(1) Mr.
3 Grunberg is a partner with L. Lin Wood, PC?

4 A I do state that, yes.

5 Q And did you make a similar
6 representation -- I'll represent to you that the
7 other documents were produced -- regarding Taylor
8 Wilson and Nicole Wade?

9 A That's my recollection, yes.

10 (Whereupon, Exhibit No. 21 was previously
11 marked for identification by the court
12 reporter.)

13 BY MR. BEAL:

14 Q Thank you. Let's look over at Exhibit
15 21. Take a second and look at Lin's e-mail back to
16 you dated January 14th, 2020 at 5:58 p.m.

17 A You want me to look at the e-mail for --
18 I see it.

19 Q Yeah, you're pointing at it.

20 A I recall this e-mail.

21 Q Thank you. And in that e-mail does Lin
22 say Taylor speaks for me unless or until I can speak
23 for myself?

24 A He does.

25 Q And did you understand that Lin was

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1 directing you to Taylor Wilson whenever you had
2 substantive questions about the Sandmann case and he
3 was not available?

4 A That was my understanding based upon
5 reading that e-mail.

6 (Whereupon, Exhibit No. 38 was previously
7 marked for identification by the court
8 reporter.)

9 BY MR. BEAL:

10 Q Let's look over at Exhibit 38. And this
11 is an e-mail that you produced from Taylor to you and
12 Kyle and Will of your firm and copies to other
13 people. Do you remember receiving that e-mail?

14 A Yes.

15 Q All right. And so there Taylor's
16 signature line is Wood, Wilson, Grunberg & Wade. And
17 that e-mail is dated February 12th, 2020. Did you
18 understand that sometime in January and the first
19 half of February 2020, WGW had formed a partnership
20 with Lin Wood called Wood, Wilson, Grunberg & Wade?

21 A I did understand that to be the fact.

22 (Whereupon, Exhibit No. 39 was previously
23 marked for identification by the court
24 reporter.)

25 BY MR. BEAL:

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1 Q Thank you. Let's look over at 39. And
2 is this a retraction demand dated February 13th
3 authored by Taylor Wilson with a copy to you sent to
4 Democracy Now Productions, Inc., with a new
5 letterhead of Wood, Wilson, Grunberg & Wade trial
6 lawyers?

7 A Yes.

8 Q And that confirmed your belief that they
9 were in a firm at least at that point?

10 MR. REYES: Objection, form.

11 A Yes.

12 BY MR. BEAL:

13 Q Thank you. And by -- by February 13th
14 the Sandmann settlement had been agreed to and
15 executed by the lawyers for the various parties; is
16 that correct?

17 A I think the initial settlement had been
18 with CNN. I don't recall if the Washington Post
19 settlement had occurred at this time.

20 Q I'm sorry, I should have been more
21 precise. I meant the CNN settlement?

22 A That's my recollection.

23 (Whereupon, Exhibit No. 17 was previously
24 marked for identification by the court
25 reporter.)

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1 The rule you keep referring to is Georgia
2 Rule of Professional Conduct Rule 1.5; is that
3 correct?

4 A That's my recollection.

5 Q And that is a rule that talks about
6 division of fees of lawyers; is that correct?

7 A Again, yes, that's my recollection.

8 Q All right. And early in the audio
9 recording Taylor states or refers to I believe an
10 earlier phone conversation which you had in which you
11 informed him that the -- that your clients, the
12 Sandmanns, had not requested time sheets at that
13 point; is that correct?

14 A At what point?

15 Q I believe Taylor says Lin's whole
16 position that Nick required time sheets is not true,
17 and in response you said right.

18 A That is correct.

19 Q Okay. So when Lin asserted that the
20 Sandmanns -- early in the dispute that the Sandmanns
21 had demanded to see the time sheets, that was not
22 correct?

23 A That's not correct. You are correct.

24 What you said is correct. The answer is yes.

25 Q Thank you. Got it. And you understood

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1 A Correct. I wanted GWG to be paid fairly.

2 And I wanted to take into account the various factors
3 that led to receipt of these settlements as a part of
4 that.

5 Q And whether GWG got paid half the fee in
6 the Sandmann versus CNN litigation, half of Lin's
7 fee, would not impact in any way the total amount of
8 fees paid by Nicholas Sandmann; is that correct?

9 A That is correct.

10 Q And it wouldn't impact the amount of fees
11 that you received for your representation of Nicholas
12 Sandmann in the CNN case, right?

13 A That is correct.

14 Q And it wouldn't -- it wouldn't require
15 the defendants to actually increase their settlement
16 amount?

17 A That is correct.

18 Q The only person who would pay something
19 more would be Lin Wood and/or L. Lin Wood, PC?

20 A Correct.

21 (Whereupon, Exhibit No. 48 was previously
22 marked for identification by the court
23 reporter.)

24 BY MR. BEAL:

25 Q Thank you. All right. Now let's turn

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1 is all these greedy will get [sic] despite my coerced
2 agreement to pay them 50 percent of a fee that at a
3 time when their mutiny and wrongdoing was unknown to
4 me.

5 So did you understand at that time that
6 Lin wanted WGW to only be paid in quantum meruit?

7 A That's what he said.

8 (Whereupon, Exhibit No. 46 was previously
9 marked for identification by the court
10 reporter.)

11 BY MR. BEAL:

12 Q Let's look over at Exhibit 46. When you
13 spoke to Lin after he wrote these the next day either
14 on the phone or as you were flying down to Reynolds
15 that -- did Lin ever express a concern to you that
16 WGW might file suit against him to recover a portion
17 of the fees that he may or may not have agreed to in
18 writing?

19 A I'm sorry. Could you reread the
20 question?

21 Q You want me to just phrase it again?

22 A Yeah, I --

23 Q Did he ever say --

24 A -- wandered a bit. Sorry.

25 Q Did he ever say he thought WGW might

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1 resort to litigation over the CNN v. Sandmann fees?

2 A I don't recall that specifically. My
3 best recollection is that he would have said that.
4 He certainly implied that in his writings. And
5 otherwise I would have expected that they would have
6 resorted to litigation were they not paid for their
7 work in the case.

8 Q And did he ever express to you any
9 concerns that the WGW folks might sue over fees in
10 other cases?

11 A That I don't think so. I don't recall
12 that. It may be in here but I don't recall it.

13 Q Any other cases that you were working on
14 such as the other Sandmann cases?

15 A At this time I think there were only
16 three cases filed and I knew that WGW had worked on
17 all three cases. And I would have expected that they
18 would have sought fees there as well. I don't know
19 that I quite answered your question but that was what
20 I was thinking.

21 Q Thank you. That's fine. Let's look over
22 at Exhibit 46. Is this the letter that you wrote me
23 about, let's see here, nine hours after receiving the
24 three e-mails from Lin?

25 A Yes.

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1 A That is correct.

2 (Whereupon, Exhibit No. 64 was previously
3 marked for identification by the court
4 reporter.)

5 BY MR. BEAL:

6 Q And so then Exhibit 64, does this appear
7 to be Lin's e-mail right back to you 30 -- 29, 30
8 minutes later?

9 A Yes.

10 Q Okay. And he says: I am excited, too.
11 The hearing will work out. I have resolved dispute
12 with former business partners. Today is a day for
13 prayer for our nation. I love you.

14 Did Lin often times say I love you in his
15 e-mails?

16 A Yes, he did.

17 Q All right.

18 A (Inaudible) that way.

19 Q And -- and did you then contact him to
20 ask him what he meant by resolving his dispute with
21 his former business partners?

22 A I don't believe that I did. I don't
23 recall reaching out to him. I just recall being
24 relieved that this was resolved and we could move on.

25 Q And you believed that if there was an

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1 agreement among the parties they could divide up the
2 fees however they wanted so long as it didn't affect
3 the Sandmann's fees or your fees and you could be
4 done with this?

5 A Absolutely.

6 Q And so you assumed that they had reached
7 one of those agreements that you talked about in your
8 letter to me where you said I will hold the money in
9 escrow absent an agreement?

10 A Correct.

11 (Whereupon, Exhibit No. 69 was previously
12 marked for identification by the court
13 reporter.)

14 BY MR. BEAL:

15 Q Thank you. Let's turn over to Exhibit 69
16 and 3146 Bates number, so it's the second page. In
17 the middle of the page does that appear to be your
18 e-mail to Lin on Tuesday, March 17th at 9:00 p.m. --
19 9:06 p.m.?

20 A Yes.

21 Q All right. And you say: Lin, I write to
22 bring you up to date on the status of the CNN
23 settlement. We were set for a hearing on Monday in
24 Kenton District Court to appoint Julie Sandmann as
25 the conservator for Nick in the CNN settlement.

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1 A Yeah.

2 Q I'm talking about 99.

3 A I don't see that there's a call scheduled
4 on this.

5 Q Okay. But you have several conversations
6 with Alston & Bird during this time period; is that
7 correct?

8 A I did.

9 Q And they were about Nicholas's consent to
10 a fee division; is that correct?

11 A Yes.

12 Q And did you understand from your
13 conversations with them -- well, you understood they
14 were representing Lin, right?

15 A I knew that, yes.

16 Q And did you understand from your
17 conversations that they did not want Nicholas's
18 consent to a division of the fees in any way other
19 than quantum meruit because that was Lin's desire?

20 A They did not say that.

21 Q Did you have that understanding in your
22 mind from your conversations with them?

23 A Alston and -- when Alston & Bird spoke
24 with me they -- there were I believe two calls. And
25 they told -- you know, they sent the settlement

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1 agreement and they told me that Nick would need to
2 approve it and that -- and then they discussed -- oh,
3 that Nick would need to approve it and that -- they
4 said that Lin was in favor of Nick's approval of the
5 settlement agreement.

6 And then they also spelled out other --
7 you know, what that looked like. And I would say
8 that my best recollection of what they said is, is
9 that Nick had some discretion with regard to his
10 approval or non-approval of the settlement. So that
11 information came from Alston & Bird.

12 Q And what did they say to you would form
13 the basis of that discretion?

14 A I don't quite understand your question.
15 Did --

16 Q On -- what would be some of the factors
17 that they indicated that Nick could consider?

18 A Well, I'll be honest. When they started
19 to discuss that, I didn't want to be involved in the
20 process. So I'm like I'll make my own decision. You
21 guys -- I don't -- I don't want there to be you
22 suggesting anything in particular to me.

23 I did not want to be -- A, I didn't want
24 to be involved, B, I was pretty ticked off that this
25 was happening, and C, I didn't want them advising me

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1 what I should do. So that's the way I approached my
2 call with them -- calls plural.

3 Q Thank you. And you believed at that time
4 that the Sandmanns would control the allocation of
5 fees between Lin and WGW and that quantum meruit was
6 required; is that correct?

7 A Well, I believe --

8 MR. REYES: Objection.

9 THE WITNESS: Is there an objection?

10 I -- I did not necessarily believe -- I
11 believed that Nick could have said yes, I
12 approve. So I didn't think that he had to
13 engage in a quantum meruit discussion over
14 the fee. So what Alston & Bird told me is
15 that Nick needed to make some decision
16 about approval or not of the settlement.

17 BY MR. BEAL:

18 Q So we saw Exhibit 46 and 56, your first
19 letter to me in February of 2020 and your second
20 e-mail correspondence with me in March of 2020 in
21 which you said we can escrow the fees, the Sandmanns
22 control and quantum meruit is required. Do you
23 remember those two --

24 A I do.

25 Q -- letters that you testified?

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1 A Yes.

2 Q Thank you. So are you saying that
3 between February of 2020 and July of 2020 your
4 position changed?

5 A No, I don't think that my position
6 changed. I think that I kind of stuck -- well, I see
7 what you're saying. So whether -- whether it was
8 settled, that would eliminate any conversation about
9 the case. My position changed after Alston & Bird
10 said Nick needs to approve this settlement.

11 And so then I felt that we were, you
12 know, kind of walking a tightrope as to what do we do
13 here. I didn't want to have that imposed upon Nick
14 and was not happy that that we were being put in this
15 position to have to deal with the situation.

16 Q Did you ever tell Nick that he didn't
17 have to consent to anything, he could just receive
18 his money and not sign any kind of consent form and
19 not get involved in the issue of his consent?

20 MR. GILFILLAN: Objection. That
21 question calls for communications subject
22 to the attorney/client privilege and work
23 product doctrine and I'll instruct Todd not
24 to answer.

25 MR. BEAL: You recognize that -- that

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1 Q Thank you. Did you tell Nick that Lin
2 did not want him to consent to any fee division
3 between his firm and WGW?

4 MR. GILFILLAN: I'm going to object to
5 the form of the question because it
6 purports to characterize privileged
7 communications. But then second, I'm also
8 going to object based on the
9 attorney/client privilege and work product
10 doctrine and instruct Todd not to
11 communicate about the substance of his
12 communications with Nick Sandmann.

13 MR. BEAL: All right. But at this
14 time when you're disbursing this large
15 amount of money to Nick and talking to him
16 or communicating with him about consent,
17 did you believe that Lin was important to
18 getting the CNN versus Sandmann settlement
19 during that time period?

20 A The case that had already been settled?

21 BY MR. BEAL:

22 Q Yes. Do you think that he was
23 instrumental in getting the settlement?

24 A At this time I did, yes.

25 Q Did you think that he was important in

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1 the other cases as well?

2 A At that time I did, yes.

3 Q Do you believe that Nick thought that Lin
4 was important?

5 MR. GILFILLAN: I'm going to --

6 MR. BEAL: I'm not asking him what he
7 told him.

8 MR. GILFILLAN: Yeah, but I'm going to
9 object because I think a lawyer's
10 understanding of what the client thinks is
11 subject to the client's attorney/client
12 privilege and also the work product
13 doctrine. So I'm going to instruct him not
14 to answer.

15 MR. BEAL: And do you believe that
16 Nick understood that Lin was acting as the
17 general in this case?

18 MR. GILFILLAN: Same objection. I'm
19 going to instruct him not to answer.

20 MR. BEAL: Do you believe that Lin was
21 important to you for your campaign at that
22 time?

23 A No, the campaign was over.

24 BY MR. BEAL:

25 Q All right. He had already made the

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1 court reporter.)

2 BY MR. BEAL:

3 Q Let's look over at Exhibit 175. Does
4 that appear to be Nicholas Sandmann's affidavit?

5 A Yes.

6 Q Thank you. Let's look at paragraph ten
7 on page three. The first sentence says: After
8 consulting with Mr. McMurtry and receiving his
9 independent advice.

10 Do you believe that that statement was
11 correct?

12 A Yes.

13 Q And so you provided your counsel to
14 Nicholas Sandmann regarding the issues he discusses
15 here in the affidavit?

16 MR. GILFILLAN: I'm going to object to
17 the extent it calls for communications
18 subject to the attorney/client privilege
19 and work product doctrine with -- with
20 Nick. I think the document speaks for
21 itself.

22 MR. BEAL: Well, I'm not asking for
23 any independent communications. You know,
24 he makes a statement here that he received
25 his independent advice and I'm asking did

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1 you provide independent advice to him?

2 MR. GILFILLAN: You can answer that.

3 A I did.

4 BY MR. BEAL:

5 Q Thank you. Then we see over on paragraph

6 11, the second sentence: I made the decision to

7 request documentation from them on my own after

8 consulting with Mr. McMurtry and receiving his

9 independent advice.

10 Did I read that correctly?

11 A Yes.

12 Q And do you believe that that was accurate

13 also?

14 A Yes.

15 Q Okay. So do you believe that your advice

16 was independent at that time?

17 MR. GILFILLAN: I'm going to object

18 again to the extent you're getting into

19 privileged communications with Nick. He

20 just testified that the statement in the

21 affidavit he believes to be correct.

22 MR. BEAL: Now I'm talking about his

23 state of mind, nothing to do with Nick.

24 Do you believe that you were

25 independent in your advice at that time?

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1 A I undertook my own investigation from the
2 February timeframe through till that date. I thought
3 arguably that there was -- there was a legal argument
4 under Kentucky law that they be -- that they receive
5 no fee. And there's a case involving the -- an
6 attorney named Barbara Bonar and Stan Chesley that
7 discusses this issue.

8 And so -- and I also received the
9 communications from Alston & Bird suggesting that
10 Nick did need to provide some consent to the
11 settlement agreement. And although I was greatly
12 disappointed that Alston & Bird was telling me we
13 were being pulled back into this thing, I do believe
14 that my advice was independent.

15 BY MR. BEAL:

16 Q And I believe you testified that you did
17 not review Rule 1.5(e)?

18 A I did back in February. I did not review
19 it again when Alston & Bird told me that Nick needed
20 to approve the settlement. My assumption -- and I
21 don't know whether they told me this. My assumption
22 is that they were -- had an interpretation of the
23 rule different than the one you had, and that's why
24 they were telling me this.

25 Q And did you undertake your own

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1 Q And you believed at that time that the
2 WGW folks were all partners of Lin Wood in L. Lin
3 Wood, PC or their other firm, Wood, Wilson, Grunberg
4 & Wade?

5 A That's what Jonathan told me back in that
6 time period. So I accepted his representation that
7 that was their status.

8 Q And do you know how being members of a
9 firm would impact the interpretation of Rule 1.5(e)?

10 A I know that the rule discusses winding up
11 affairs and so forth. You know, I think -- I think
12 that as I said before the case law in Kentucky is a
13 little different. I was looking at it from a
14 Kentucky standpoint.

15 Q And if we look back at Exhibit 92 in the
16 first binder?

17 A I see it.

18 Q Thank you. And we look at page six --
19 excuse me, page seven, note eight, states that
20 paragraph E, meaning Rule 1.5(e), does not prohibit
21 or regulate the division of fees to be received in
22 the future for work done when lawyers were previously
23 associated in a law firm.

24 Did -- did you have an opportunity to
25 review note eight to Rule 1.0 -- Rule 1.5(e), sorry?

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1 A Not prior, not in the July 2024
2 timeframe. I don't believe that the version of the
3 rules that I reviewed in February of 2020 yet
4 contained that provision. I think the rules did. I
5 think my book -- you know, the book that I referred
6 to for those things didn't have that rule, did not
7 have that number eight comment.

8 With regard to heading into July 4th,
9 2020, no, I did not review that. I did not see this
10 memo. I did not review that. I relied upon what
11 Alston & Bird told me was required under Georgia law.

12 Q And you discussed Rule 1.5 with Lin in
13 February of 2020; is that right?

14 A I believe that I did, yes.

15 Q And then if we look over to page six of
16 that exhibit?

17 A Which one?

18 Q The 92, sorry. And I'll just read it to
19 you.

20 A Okay.

21 Q Georgia Rule of Professional Conduct
22 1.5(e) provides a division of the fee between lawyers
23 who are not in the same firm may be made only if.

24 Not in the same firm. And I believe you
25 testified that you believed that the WGW folks were

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1 partners with Lin Wood in his firm or in the firm of
2 WWGW?

3 A When they left the firm, yes, I would
4 have said that they were partners.

5 Q Thank you. And did you get a chance to
6 review Georgia Rule of Professional Conduct 1.0?

7 A I didn't review any Georgia rules of
8 professional conduct.

9 Q What steps did you undertake if any to
10 determine what constitutes a law firm -- associated
11 with a law firm or being members of a law firm?

12 A I didn't do anything with regard to
13 Georgia law. I'm not licensed or affiliated with any
14 firm down here, so I didn't make any review of
15 Georgia law. I relied upon what Alston & Bird told
16 me. And prior in the February timeframe I thought
17 Kentucky law applied. And as I said I decided to use
18 a case involving Bonar and Chesley, which I think
19 would support my legal position at that time.

20 Q Looking back at the -- I think you're on
21 the right one, the affidavit, did you ever ask to see
22 Lin Wood's records of his time spent in the Sandmann
23 versus CNN case?

24 A No.

25 Q When providing legal advice did you

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1 discuss the issue of proportionality?

2 MR. GILFILLAN: Object to form.

3 Object to that question. It calls for

4 communications subject to the

5 attorney/client privilege and work product

6 doctrine.

7 MR. BEAL: What steps, if any, did you

8 undertake to determine the proportionality

9 of any fee to WGW as opposed to Lin Wood?

10 A The only steps that I would have taken or
11 that I did take were to consider the relative value
12 of what each group, Lin Wood and WGW, brought to the
13 settlement. And in my view Lin Wood's -- my view at
14 the time, it's evolved, but at the time I would have
15 said that Lin procured the settlements based upon his
16 alleged national reputation and standing in the area
17 of defamation law and that WGW were his able
18 supporters in that effort.

19 But that none -- none of that group, WGW,
20 would have had any success obtaining those same
21 settlements as Lin was able to based upon in part
22 his -- you know, he personally knew the lawyers for
23 CNN. He personally knew the lawyers for the
24 Washington Post, had dealt with them before and they
25 seemed to have a good rapport. So I saw Lin as being

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1 the -- you know, kind of using a realtor term, the
2 procuring cause of the settlements.

3 BY MR. BEAL:

4 Q Would you agree that there would have
5 been no settlement had there not been a complaint and
6 a complaint or amended complaint that ultimately
7 survived a motion to dismiss?

8 A Yeah, sure. And I think that, you know,
9 in an alternate reality Lin had the capacity to have
10 drafted the complaint or directed me to draft that
11 complaint just as he helped train the WGW people in
12 this field of law.

13 Q Did you ever have a discussion with Lin
14 about how often he ever typed any pleading or any non
15 e-mail correspondence?

16 A I'm sure that he did practically nothing
17 other than talk to me on the phone from time to time.

18 Q Thank you. When WGW withdrew from these
19 cases, your firm undertook a lot of the written
20 product thereafter in representation of Nick
21 Sandmann; is that correct?

22 A Yes.

23 Q Would you say that your law firm then
24 after their departure effectively did all the written
25 work product on the Sandmann cases?

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1 A Yes. I even had to -- had to hire
2 another attorney to help.

3 Q All-consuming absorbing kind of work?

4 A Yes.

5 Q And you were aware at the time of the
6 execution of this affidavit and you were aware in
7 July of 2020 that Lin did not keep a record of his
8 time either?

9 A I certainly would not have -- I didn't
10 know that as an independent fact. My assumption was
11 that he did not.

12 Q Okay. And he had told you in multiple
13 e-mails that the WGW folks did not to his knowledge
14 either?

15 A That's what he told me.

16 MR. GILFILLAN: We've been going about
17 an hour and 20 minutes.

18 THE WITNESS: I'm fine. If you need a
19 short break, that's fine.

20 MR. BEAL: You need a break?

21 MR. GILFILLAN: Yeah.

22 THE VIDEOGRAPHER: Going off the
23 record, 1:39 p.m.

24 (Whereupon, the video camera was
25 turned off.)

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1 (Whereupon, a brief recess was taken.)

2 (Whereupon, the video camera was

3 turned on.)

4 THE VIDEOGRAPHER: We're going back on
5 the record. The time is 2:05 p.m. Please
6 continue.

7 BY MR. BEAL:

8 Q Mr. McMurtry, thank you. Follow up on a
9 couple of questions. Let's see if we can't bring
10 this to a close.

11 Earlier I believe you testified that you
12 and Lin had discussions in February 2020 about Rule
13 1.5?

14 A Yes.

15 Q All right. Did Lin bring those up to
16 you?

17 A I don't recall whether he mentioned it or
18 whether I looked at the rule myself. I'm sorry, I
19 don't recall. If it's in one of his e-mails
20 mentioning that rule then he would have initiated
21 that. I just don't recall.

22 Q Did -- in your conversations with Alston
23 & Bird in July did they ever tell you that WGW were
24 not lawyers of L. Lin Wood, PC?

25 A I don't believe so. I don't recall that.

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1 Don't recall them ever saying that.

2 Q Did they -- but they did tell you they
3 were lawyers of a separate law firm?

4 A I believe that they did.

5 Q Thank you. Did you come away with the
6 belief that Lin wanted -- did you come away with a
7 belief as to what Lin's desires were regarding fee
8 splits in the Sandmann versus CNN case based on your
9 conversations with Alston & Bird?

10 MR. REYES: Objection, form.

11 A I do not believe that anything that
12 Alston & Bird did gave me an indication as to what
13 Lin's desires were.

14 BY MR. BEAL:

15 Q But you had a belief based on your
16 communications directly with Lin?

17 A I did.

18 Q And was that that he did not want to
19 share fees on that case with WGW except on a quantum
20 meruit basis?

21 MR. REYES: Objection, form.

22 A I don't know that he was as specific as
23 saying quantum meruit, but in that July 2020
24 timeframe based upon my conversations with Lin, I
25 took that he did not want -- he did not want Nick to

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1 approve that settlement and he didn't want to share
2 fees with WGW.

3 BY MR. BEAL:

4 Q Thank you. You had no discussions with
5 Lin between that -- the March 17th time period and
6 these July 2020 conversations about the WGW fee
7 split. Is that fair?

8 A The first I would have learned of this
9 new WGW fee split issue would have been when Lin
10 called me and said my lawyers from Alston & Bird are
11 going to call you. And then they called me and they
12 raised this issue of needing Nick to approve the
13 settlement between Lin Wood and WGW.

14 So that would have occurred in July 2020
15 I believe based upon my review of the e-mails and
16 documents. So between that March e-mail where Lin
17 said we're settled and that July call where Lin said
18 Alston & Bird will be calling you, I didn't even
19 think about this. I thought it was over.

20 Q Thank you. So nothing changed in your
21 perception of what Lin wanted between your
22 February/March conversations with Lin and your July
23 conversations with Lin; is that right?

24 A The only thing that would have indicated
25 a change is that e-mail in March where he said we're

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1 settled. But other than that, he never spoke to me
2 and said my -- my feelings on settlement have
3 changed, you know, up until the July timeframe.

4 Q And he never said disregard prior
5 communications or anything?

6 A No.

7 Q I believe you testified about a trip that
8 you guys took down to Reynolds plantation to meet
9 with him?

10 A I could never forget that trip, but go
11 ahead.

12 Q And on -- did Lin send a private jet for
13 you guys?

14 A He did.

15 Q All right. And in that trip he also
16 expressed his views about fee splits and a variety of
17 other issues?

18 A I don't recall exactly. It was a -- it
19 was a very strange event. He expressed a lot of
20 views in the day that we were there. And I'm sure
21 that there would have been -- based upon everything
22 that is happening that there would have been some
23 complaints about WGW.

24 Q Okay. Now, there was another trip down
25 to his plantation in South Carolina, the Tomotley

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1 we would like to see some evidence of their work, you
2 know, show me their work.

3 Q And you were keenly aware of the amount
4 of written product they did because you were working
5 with them on every phase of this case?

6 A In my opinion --

7 Q Is that correct?

8 A In my opinion as an attorney separated
9 from my role as a lawyer I thought that their fee
10 would have been fine. I mean you could make an
11 argument one way or the other and say 800,000 is too
12 much or it's not enough. I think the point of the
13 July 24th thing is that this was thrust upon me
14 without anybody asking me, and I didn't want to be --
15 I really didn't want to be a part of it.

16 I didn't want to say yes. I didn't want
17 to say no. I really wanted to thread the needle and
18 get out of the -- get out of the whole situation.
19 That's what I was trying to do.

20 Q Did you ever tell Lin that you felt like
21 he had brought you into this situation unfairly or
22 improperly?

23 A I probably said I'm really pissed off
24 that I'm involved in this situation, yes. I was not
25 happy about it and I didn't want to be involved in

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1 we ought to -- let's focus on the language
2 that's actually on that recorded call.

3 THE WITNESS: So in response do you
4 want to ask a different question or do you
5 want me to --

6 BY MR. BEAL:

7 **Q No. Go ahead and answer that one.**

8 A Okay. So as I understand your question,
9 did I tell Alston & Bird that Nick -- did I tell
10 Alston & Bird that I wanted to see something for WGW
11 to prove its work. And that's just the gist of what
12 I said, show us your work, then yes, I did tell that
13 to Alston & Bird.

14 **Q Right. That's paragraph 31. Paragraph**
15 **32 where you're referencing Nick and his demand for**
16 **documents, I believe what you meant is it's your**
17 **demand for documents; is that right?**

18 MR. GILFILLAN: I'll object to the
19 form to the extent it mischaracterizes what
20 he meant.

21 A What I communicated to Alston & Bird was
22 that we would like WGW to show its work.

23 BY MR. BEAL:

24 **Q Okay. But I believe you said on the**
25 **recorded call that the disputed client did not demand**

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1 **time records to substantiate fees?**

2 A Correct. I think something akin to your
3 letter that you sent before, if you had sent that on,
4 you know, August 3rd or something, had you chosen to
5 do that then I would have been able to proceed. And
6 again, I didn't want to be approving or not approving
7 the fee, but that would have been the next step in
8 getting your people paid.

9 **Q But not getting into your attorney/client**
10 **communications, you were capable of telling Nick all**
11 **the facts regarding proportionality of the fee**
12 **because you lived it, you worked it and you worked**
13 **with the WGW folks every day throughout 2019 and the**
14 **beginning of 2020, correct?**

15 MR. GILFILLAN: I'm going to object
16 and instruct him not to answer to the
17 extent that it calls for what -- he what he
18 said and communicated --

19 MR. BEAL: Nope.

20 MR. GILFILLAN: -- about with the
21 Sandmanns.

22 MR. BEAL: Doesn't ask that at all.

23 THE WITNESS: May I proceed?

24 MR. GILFILLAN: Yes.

25 A So if you had called me as an expert

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1 witness to review the work done on the case, I would
2 have found that their fee request was reasonable.

3 MR. BEAL: Thanks. Let's take a quick
4 break and see if we have any mop up
5 questions.

6 THE VIDEOGRAPHER: Going off the
7 record, 2:34 p.m.

8 (Whereupon, the video camera was
9 turned off.)

10 (Whereupon, a brief recess was taken.)

11 (Whereupon, the video camera was
12 turned on.)

13 THE VIDEOGRAPHER: We're going back on
14 the record. The time is 2:41 p.m. Please
15 continue.

16 (Whereupon, Exhibit No. 199 was
17 previously marked for identification by the
18 court reporter.)

19 BY MR. BEAL:

20 Q Can you turn over to Exhibit 199, Mr.
21 McMurtry? We received this extraction report from
22 Cellebrite from your team. Can you describe for us
23 who Cellebrite is?

24 A Is this my phone?

25 Q Yeah, I think.

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1 to the -- whether we would go through the process of
2 probate or whether we'd wait until Nick turned 18 and
3 what that meant. So there were some additional
4 negotiations. But I can't say exactly when. I think
5 around this time.

6 Q And did -- did Lin ever indicate to you
7 that he wanted to wait till Nick turned 18 because it
8 would be easier for him to convince Nick not to
9 consent to any fee agreement with the WGW people?

10 A No.

11 Q Was it for increased confidentiality of
12 the settlement?

13 A What happened is, is we ended up going to
14 a judge, Douglas Grothaus, to try to have the
15 agreement. I graduated from law school with Judge
16 Grothaus. I called him up, I said we've got this
17 confidential settlement agreement. Can it remain
18 confidential through this process? And he said no, I
19 have to look at it and somebody else might look at
20 it.

21 So we considered that just due to the
22 high profile nature of things at that time that it
23 would be better -- I think we told this -- I'm pretty
24 sure I told this to opposing counsel that I did -- I
25 was doing all this. I told this to opposing counsel

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1 and said there's a problem, it may -- it may not
2 remain confidential, it may be leaked out of the
3 clerk's office. And so they said let's wait until he
4 18. And then we negotiated points over what that
5 meant since we'd have to wait all this time to get
6 paid.

7 Q Were you aware that Lin ever communicated
8 any of that to WGW?

9 A No.

10 Q And so I believe you testified earlier
11 that the settlement in the CNN Sandmann case was in
12 January of 2020?

13 A Yes.

14 Q Is that right? And these e-mails are in
15 March of 2020; is that correct?

16 A Yes.

17 Q All right. What did Lin say to you in
18 July of 2020 that made you think he still did not
19 want Nick to consent to a fee division with WGW?

20 A So from the time of the call with Alston
21 & Bird up until July 24th I probably had three or
22 four phone calls from Lin where he was basically
23 unhinged and screaming, I'm being screwed, I'm being
24 screwed, WGW is screwing me, you know. And he was
25 really -- as Mr. Wilson knows, you know, off the

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1 reservation, you know, crazy.

2 And so we had to deal with that and
3 that's what he told me. So I knew that he was
4 looking for a deficient solution. He was trying to
5 blow things up. So that's what he told me.

6 Q Thank you. Did you ever receive any
7 interest on the CNN settlement?

8 A There -- yes, there was interest paid on
9 the CNN settlement.

10 Q And do you know approximately how much
11 that was?

12 MR. GILFILLAN: I'm going to object
13 based on confidentiality grounds. We don't
14 unfortunately have a protective order in
15 this case in place, and I think the amount
16 of that would be -- would be confidential.

17 MR. BEAL: Okay. And however much it
18 was, did you and Lin share some portion of
19 that interest by your contingency fee?

20 A Yes, we did. It was just, you know, some
21 simple type interest on the gross amount that was
22 tacked onto the settlement by July 20.

23 MR. BEAL: Thank you very much.

24 THE WITNESS: Okay.

25 MR. BEAL: I appreciate it.

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1 Q If I may, let's go to Exhibit No. 5.

2 A (Witness complies with request of
3 counsel.)

4 Q And it's my understanding that at some
5 point in time counsel for Mr. Wood at Alston & Bird,
6 Joey Burby and Chris Marquardt, asked you to confirm
7 that Nicholas Sandmann had seen the entire affidavit
8 that he had signed. Is that so?

9 A Is it so that Nicholas Sandmann saw the
10 entire affidavit that he signed? I missed your
11 question. I'm sorry.

12 Q Yes. That's question one.

13 A Nicholas Sandmann did see the entire
14 affidavit.

15 (Whereupon, Defendants' Exhibit No. 6 was
16 previously marked for identification by the
17 court reporter.)

18 BY MR. REYES:

19 Q And that's what you confirmed to the
20 lawyers on Exhibit No. 6; is that correct?

21 A Without reading the entire affidavit I
22 believe that that is correct.

23 Q Okay. Was Mr. Wood involved in those
24 conversations with you at the time that Nicholas
25 Sandmann was asked to provide an affidavit?

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1 A Mr. Wood was not involved in any way in
2 the affidavit.

3 (Whereupon, Defendants' Exhibit No. 3 was
4 previously marked for identification by the
5 court reporter.)

6 BY MR. REYES:

7 Q Okay. If I may direct your attention to
8 Exhibit No. 3.

9 A (Witness complies with request of
10 counsel.) I see it.

11 Q Did you present that settlement agreement
12 to the Sandmanns for consideration?

13 A The fact is that I did.

14 Q Okay. Who communicated -- who spoke with
15 you on behalf of Mr. Wood regarding the need for
16 consent from Nicholas Sandmann in order for the fee
17 split to occur?

18 A Alston & Bird, Joey Burby and Chris
19 Marquardt, however you pronounce it. Marquardt.

20 Q Not Lin Wood?

21 A Lin Wood did not tell me that Nicholas
22 Sandmann had to consent to the settlement agreement.

23 Q Okay. And I believe that you testified
24 earlier today that Joey Burby told you that Lin had
25 said that Nick should consent; is that right?

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1 A That is what Joey Burby and/or Chris
2 Marquardt told me.

3 Q So it's fair to say that Lin Wood never
4 told you ask Nick Sandmann not to consent?

5 A Lin Wood never told me or asked me to
6 have Nick Sandmann not consent.

7 Q Has Mr. Beal's office contacted you
8 regarding coordinating depositions for Nick Sandmann
9 or Julie Sandmann or Ted Sandmann?

10 A No.

11 Q At some point in time the complaint that
12 the WGW plaintiffs filed against Mr. Wood made it to
13 the New York Times before it had been filed. Did the
14 New York Times ever contact you to comment?

15 A No.

16 Q Did you know that -- about that, that the
17 complaint draft had been sent to the New York Times
18 before it was filed?

19 MR. BEAL: I'm going to object to the
20 form of the question on the grounds that it
21 calls -- object to the form of the question
22 on the grounds that it assumes facts not in
23 evidence that anyone provided a copy of
24 anything in this case to the New York Times
25 and they didn't retrieve it on their own

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1 Q Were you still dealing with the CNN
2 settlement when the WGW plaintiffs were no longer
3 associated with L. Lin Wood?

4 MR. BEAL: Object to the form of the
5 question on vagueness grounds. What do you
6 mean by dealing with.

7 A So around --

8 BY MR. REYES:

9 Q Do you understand the question, Mr.
10 McMurtry?

11 A I can answer the question. Around that
12 time period we had settled with CNN. I don't know
13 the exact date that the settlement agreement was
14 signed. We then moved to try to have it approved
15 because Nick Sandmann had not yet achieved the age of
16 18, so we needed court approval. And I was taking
17 the lead on all of that. After Taylor Wilson was no
18 longer involved I took over what he was doing.

19 Q So it's fair to say that Wilson, Wade and
20 Grunberg were no longer involved in the case at that
21 time?

22 A During the period of working to have the
23 settlement agreement approved, I believe that they
24 had left the firm.

25 Q And they were not involved --

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1 A Approved -- approved by the -- approved
2 by the Court. I think that it was signed and
3 finalized, but I don't think we had Court approval to
4 distribute the monies to a minor at that point.

5 Q And the case was still active. It had
6 not been dismissed, correct?

7 A I don't believe so.

8 Q You believe it was active?

9 A We were trying to figure out how to
10 properly dismiss the case. We were trying to figure
11 out if we needed the federal court to also approve
12 the settlement. Once the settlement had been
13 approved then certainly it would have required a
14 dismissal of the case, but we had not made it that
15 far I do not believe in that March timeframe. But
16 there will be something of record as to the exact
17 date we submitted the settlement. It probably came
18 later in July when they paid us.

19 Q Okay.

20 A Dismissed the case. If I misspoke there,
21 I think we probably dismissed the case after they
22 paid the monies in July of 2020.

23 Q Very well. Did Lin Wood have anything to
24 do with the postponement of the -- of the
25 conservatorship hearing?

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1 A No. The conservatorship hearing was
2 postponed after I spoke with Doug -- Judge -- well,
3 let me -- there were -- there was a hearing. We
4 showed up. It was cancelled at the last minute. I
5 think we actually showed up. And then we were going
6 to move to a different judge to petition to have a
7 guardian appointed. And in that process I spoke with
8 the judge to whom we were going to present the
9 guardianship materials. And he said that he could
10 not guarantee us that the settlement would remain
11 confidential.

12 So then we contacted the defendants and
13 they agreed that they would rather delay and pay us
14 later than risk the settlement becoming public. And
15 Lin had nothing to do with any of that process.

16 (Whereupon, Defendants' Exhibit No. 4 was
17 previously marked for identification by the
18 court reporter.)

19 BY MR. REYES:

20 Q Thank you. I'll direct your attention
21 now to Exhibit 4. And is this an e-mail from you to
22 Chris Marquardt on August 10, 2020 at 10:25 a.m. in
23 which you say: Chris, I think Drew Beal committed
24 malpractice by not including the Sandmanns.

25 What do you mean by that?

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1 BY MR. REYES:

2 Q Mr. McMurtry, the plaintiffs in this case
3 allege in their complaint at paragraph five that you
4 and the Wood defendants preplanned that the client in
5 the disputed case, Nicholas Sandmann, would refuse to
6 consent to plaintiff's compensation with your knowing
7 aid. Is that true?

8 A No.

9 Q At paragraph six the plaintiffs allege
10 that through discovery it has become apparent that
11 the McMurtry defendants conspired with the Wood
12 defendants to defraud the plaintiffs knowing and
13 understanding the overall objective was to avoid
14 compensating plaintiffs for the disputed case in the
15 manner agreed to by the Wood defendants and took
16 multiple steps before and after the settlement
17 agreement was executed to accomplish this fraudulent
18 aim. Is that true?

19 A I did not do what's alleged in the
20 paragraph. I -- that's their argument in the
21 complaint, so -- and I didn't take any action as
22 described.

23 Q At paragraph seven the plaintiffs allege
24 that at the Wood defendants' request the McMurtry
25 defendants first ensured just prior to the execution

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1 of the settlement agreement that the client in the
2 disputed case would not consent to the payment of
3 future fees to plaintiffs as the Wood defendants
4 promised. And then it goes on.

5 The McMurtry defendants carried out the
6 fraudulent plan when performance later came due by
7 instructing the client in the disputed case not to
8 consent to the agreed payment on the purported basis
9 that the law required quantum meruit only.

10 Is that true?

11 A I'm sorry, I would need to see the
12 complaint. Do we have it? That's a lot for me to
13 remember and then answer.

14 Q Okay. I can -- I can repeat the
15 question. It's paragraph seven of the complaint
16 filed against the Wood defendants and the McMurtry
17 defendants. It says at the Wood defendants request
18 the McMurtry defendants first ensured just prior to
19 the execution of the settlement agreement that the
20 client in the disputed case would not consent to the
21 payment of future fees to plaintiffs as the Wood
22 defendants promised.

23 A That's not true.

24 Q That's not true, correct?

25 A It is not true.

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1 Q The second paragraph in that allegation
2 is that the McMurtry defendants carried out the
3 fraudulent plan when performance later came due by
4 instructing the client in that disputed case not to
5 consent to the agreed payment on the purported basis
6 that the law required quantum meruit only.

7 Did that happen?

8 A That is not true.

9 Q That did not happen, correct?

10 A It's not true what you read.

11 Q Isn't it true that the plaintiffs allege
12 that the Wood defendants and the McMurtry defendants
13 defrauded them?

14 A I think that's the gist of what they
15 allege in their complaint.

16 Q And they allege that you defrauded them
17 by hiding the ball from them that at some point in
18 time they would be told you're not entitled to what's
19 in the settlement agreement, you're only entitled to
20 quantum meruit, right?

21 MR. BEAL: Object to the form.

22 A I don't quite understand the question.
23 I'm sorry.

24 BY MR. REYES:

25 Q One of reasons why they allege that you,

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1 the McMurtry defendants and the Wood defendants
2 defrauded the plaintiffs is that you hid the ball
3 from them and all along you were going to say Nick
4 Sandmann can only agree to the quantum meruit?

5 MR. BEAL: Same objection.

6 A I did not conspire with Lin to say that
7 Nick Sandmann would only agree to quantum meruit.

8 BY MR. REYES:

9 Q Did you ask Nick Sandmann to consent?

10 MR. GILFILLAN: I'm going to -- yeah,
11 I'm going to object and instruct him not to
12 answer. I think that question calls for
13 communications that are subject to the
14 attorney/client privilege and information
15 subject to the work product doctrine.

16 MR. REYES: Understood.

17 Would you explain briefly what's your
18 understanding of that Kentucky case that
19 you referred to earlier regarding the
20 applicability of the Rule 1.5(e) under
21 Kentucky law?

22 A Yeah. I mean the Kentucky Supreme Court
23 said in this case, and I think it was about 2012,
24 that if in a contingency fee situation if a lawyer
25 abandons the case without cause then that lawyer is